

NOT TO BE PUBLISHED

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

----

DONNA L.,

Petitioner,

v.

SUPERIOR COURT OF YOLO COUNTY,

Respondent;

YOLO COUNTY DEPARTMENT OF EMPLOYMENT  
AND SOCIAL SERVICES,

Real Party in Interest.

C048140

(Super. Ct. No.  
JV04001)

Petitioner Donna L., mother of the minor, seeks an extraordinary writ (Cal. Rules of Court, rule 39.1B) to vacate the orders of the juvenile court made at the six-month review hearing terminating reunification services and setting a Welfare

and Institutions Code section 366.26 hearing.<sup>1</sup> Petitioner also requests a stay of proceedings in the respondent court. We shall deny the petition, rendering the request for stay moot.

The four-month-old minor was removed from petitioner's custody in January 2004 because of petitioner's arrest on a parole violation and her untreated and severe alcoholism. Petitioner was returned to state prison, where she remained throughout the reunification period. At the dispositional hearing, the Yolo County Department of Employment and Social Services (DESS) recommended the court deny petitioner reunification services because she had failed to reunify with the minor's sibling; and following termination of services and termination of her parental rights as to that sibling, petitioner failed thereafter to make reasonable efforts to treat the alcoholism underlying the termination of parental rights. Although finding that the above circumstances described by DESS did exist, the court exercised its discretion to order services for petitioner.

The report filed in August 2004 for the six-month review hearing again recommended termination of petitioner's services. The report stated petitioner was participating in some prison programs, i.e., substance abuse and Alcoholics Anonymous meetings. However, petitioner's participation in other programs was compromised or precluded by her obligation to attend court

---

<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

appearances away from the prison. Thus, petitioner had not participated in an anger management program. Because of her incarceration, she had visited the minor only once since his detention. Petitioner was scheduled for release in November 2004, but as a part of her prison program was to participate in ongoing residential drug and alcohol treatment followed by transitional living and outpatient drug and alcohol treatment, she could not be in a position to independently parent the minor until those programs were completed. At that point, petitioner would still need to complete the other components of her plan, including therapy and anger management. The report concluded that petitioner historically did well maintaining sobriety and attending programs in the structure of jail or prison but would soon relapse into alcoholism upon release.

At the contested review hearing in mid-October 2004, petitioner testified about her current program in prison and the prospects for additional services on release. The social worker testified she was aware of petitioner's progress in the substance abuse program. That program contained some anger management components but not the full anger management program petitioner needed. The social worker also knew petitioner had begun a parenting program at the end of September 2004 but had not been selected for counseling. It was unclear whether the postprison program would meet the elements of the reunification plan, and the social worker was very concerned about returning the minor to petitioner outside a structured environment because of petitioner's historical inability to maintain sobriety

without that structure. A second social worker testified that services should be terminated because even 12 months of reunification would not be enough, given petitioner's history of instability, to insure petitioner's ability to care for her own needs, much less those of the minor outside a structured environment.

The court adopted the findings and orders recommended by DESS. The recommended findings and orders contained a finding that returning the minor to petitioner would be detrimental to the safety, protection, or physical or emotional well-being of the minor and provided a factual basis for the finding. There was also a finding that "clear and convincing evidence exists that the mother has failed to participate and make substantive progress in the Court-ordered treatment plan." At the hearing, the court also discussed the possibility of ordering further services for petitioner but stated, "[T]here's just no way I can make a finding this child would be released and [sic] to the care of this mother in six months. It's not possible."

Petitioner argues that the court had authority to terminate services at the six-month review hearing only if it found that the parent had failed to participate regularly and to make substantive progress in a court-ordered treatment plan. Petitioner contends the court did not find, and no evidence was offered from which the court could have found, that she failed to actively participate in the plan. Accordingly, petitioner argues, the court erred in terminating services. We disagree.

Section 366.21, subdivision (e) provides, in relevant part, that at the six-month review hearing, "If the child was under the age of three years on the date of the initial removal . . . and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days."

By adopting the findings and orders recommended by DESS, the court made the findings necessary to support its order setting a section 366.26 hearing. Petitioner's argument thus devolves into an assertion that the court's findings are not supported by substantial evidence. The argument fails.

The evidence established that petitioner had a serious long-term alcohol and anger management problem that had resulted in incarceration and the loss of her other children. She would require extended treatment and aftercare. Her resources and access to appropriate programs were limited in prison and the substantive progress difficult, if not impossible, to measure. Petitioner had always done well while incarcerated but suffered almost immediate relapses upon release. She certainly had not made enough progress in the substance abuse treatment program to be released without the intensive aftercare program, which could last as long as 15 months. She had minimal parenting instruction and virtually no anger management therapy. The trial court acknowledged petitioner's participation in programs within the constraints imposed by her incarceration and the need to make continued court appearances. Petitioner may have been

sincere, but her sincerity cannot fill the gaps in participation and progress in the court-ordered treatment plan.

The trial court did not err in terminating petitioner's services and setting the section 366.26 hearing.

**DISPOSITION**

The petition is denied.

\_\_\_\_\_  
RAYE, Acting P.J.

We concur:

\_\_\_\_\_  
MORRISON, J.

\_\_\_\_\_  
HULL, J.